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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

Montana Democratic Party,  
Montanans for Tester, Macee  
Patritti,

Plaintiffs,

v.

Christi Jacobsen, in her official  
capacity as Montana Secretary of  
State, Jeffrey Mangan, in his  
official capacity as Montana  
Commissioner of Political  
Practices,

Defendants.

CV-21-119-M-DWM

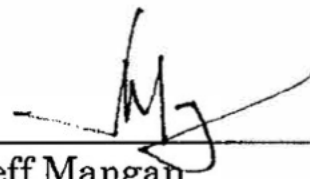
**AFFIDAVIT OF  
JEFF MANGAN**

I, Jeff Mangan, being first duly sworn upon his oath, state as follows based on my personal knowledge:

1. I am the Montana Commissioner of Political Practices.
2. On October 14, 2021, Plaintiffs' summons and a copy of the complaint were delivered via process server to the Commissioner of Political Practices office. I received the summons and complaint.
3. Exhibit 2 is a true and accurate copy of the summons and complaint as served on the Commissioner of Political Practices in this matter on October 14, 2021.

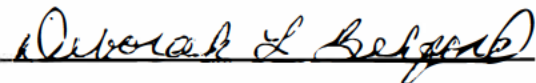
I declare under penalty of perjury that the foregoing is true and correct.

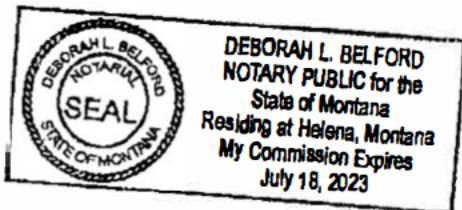
Dated: 11-3-2021

  
\_\_\_\_\_  
Jeff Mangan

Subscribed and sworn to before me this 3 day of November, 2021.  
by Jeff Mangan, State of Montana / Lewis & Clark County.

(NOTARIAL SEAL)





Printed Name: Deborah L Belford

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

Dated: November 3, 2021

/s/ Brent Mead  
BRENT MEAD

# Exhibit 2

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*\*Motion for Pro Hac Vice Forthcoming*

UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
MISSOULA DIVISION

Montana Democratic Party, Montanans for  
Tresor Macee Patrilli,

Plaintiffs,

v.

Christi Jacobsen, in her official capacity as  
Montana Secretary of State, Jeffrey  
Mangan, in his official capacity as Montana  
Commissioner of Political Practices,

Defendants.

Case No. CV-21-119-M-DWM

TO: Jeffrey Mangan, in his official capacity as Montana Commissioner of Political  
Practices

PLEASE TAKE NOTICE:

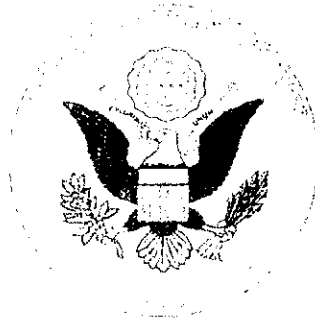
A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff's an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address is:

Peter Michael Meloy,  
MILLOY LAW FIRM,  
P.O. Box 1241,  
Helena, MT 59624

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Dated: 10/12/21



*[Signature]*

Chief Clerk of Deputy Clerk of Court

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*Motion for Pro Hac Vice Forthcoming*

UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
MISSOULA DIVISION

Montana Democratic Party, Montanans for  
Tester, Macee Patrilli,

Plaintiffs,

v.

Chris Jacobsen, in her official capacity as  
Montana Secretary of State, Jeffrey  
Mangan, in his official capacity as Montana  
Commissioner of Political Practices,

Defendants

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs MONTANA DEMOCRATIC PARTY, MONTANANS FOR

TESTER, and MACHE PATRITTI, by and through their undersigned counsel, file this COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF against Defendant CHRISTI JACOBSEN, in her official capacity as the Montana Secretary of State (the “Secretary”), and JEFFREY MANGAN, in his official capacity as the Montana Commissioner of Political Practices (the “Commissioner”), and allege as follows:

### FACTS AND NATURE OF THE CASE

1. The 2020 general election saw Montana’s highest voter turnout rates in nearly 100 years. Montanans voted in record numbers, with over 80 percent of registered voters casting a ballot.

2. This record voter participation was propelled by a surge in turnout among Montana’s young voters. In 2020, the number of Montanans between the age of 18 and 29 who cast a ballot increased nearly 40 percent from the 2016 presidential election.

3. Turnout among young voters in Montana has been rapidly on the rise over the past five years. During the 2018 midterm elections, 42 percent of young voters cast a ballot, up from less than 18 percent of young voters in the 2014 midterm election.

4. Rather than celebrate this laudable increase in youth participation, the Montana Legislature chose instead to pass a suite of voter-suppression laws targeting



young voters and limiting their access to the franchise. Among the bills passed during the state's most recent legislative session were measures that eliminated Montana's longstanding tradition of election day voter registration (House Bill 176) and that all but use of student ID cards as a form of voter identification (Senate Bill 319).

5. This lawsuit challenges another one of those bills, Senate Bill 319 (“SB 319”), which imposes arbitrary, vague, and onerous restrictions on the rights of college students to conduct or permit political organizing efforts, engage in core political activities, and otherwise participate fully in the political process.

As explained below, SB 319 prohibits any political committee—including student organizations—from directing, coordinating, managing, or conducting any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or voter turnout efforts for a federal, state, local, or school district within a residence hall, dining facility, or athletic facility operated by or for the postsecondary institution.” SB 319, 67<sup>th</sup> Leg., Reg. Sess. § 21(1) (House 2021) (the “Student Organizing Ban”).

7. The Student Organizing Ban is a surgical attack on the successful organizing efforts and increased political power of Montana’s youngest voters. By targeting only residence halls, dining facilities, and athletic facilities, the Legislature’s ban effectively prevents young, newly enfranchised Montanans

from participating fully in the political process. Not only does the Student Organizing Ban prevent political committees from reaching college students in the arena of campus where their efforts are likely to be the most fruitful, it also prohibits college students from engaging in core political speech—including organizing efforts—in conjunction with any political committee.

Plaintiffs bring this action challenging the Student Organizing Ban as unconstitutional under the First, Fourteenth, and Twenty-Sixth Amendments.<sup>1</sup>

### **JURISDICTION AND VENUE**

This Court brings this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under

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<sup>1</sup> Senate Bill 319 is also subject to a challenge in Montana state court, where plaintiffs have challenged several aspects of the bill, including the Student Organizing Ban, under both the First Amendment and multiple provisions of the Montana Constitution. *See Compl. Forward Mont. et al. v. Montana et. al.*, Case No. ADV-2021-611 (Mont. Dist. Ct. June 1, 2021). In that proceeding, the court granted a preliminary injunction enjoining the enforcement of Senate Bill 319 for the pendency of that litigation. *See Prelim. Inj. Order, Forward Mont. et al. v. Montana et. al.*, Case No. ADV-2021-611 (Mont. Dist. Ct. July 1, 2021). That case is still pending, but there has been no final resolution regarding the enforceability or constitutionality of the Student Organizing Ban. Not only are Plaintiffs here not parties to that proceeding, they raise distinct and additional claims for injuries to their constitutional rights entitling them to relief from this Court.

the Constitution and laws of the United States and involve the assertion of federal law, order of state law, of rights under the U.S. Constitution.

The Court has personal jurisdiction over Defendants, who are sued in their individual capacities.

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1391(b) because, *inter alia*, at least one part of the events that gave rise to Plaintiffs' claims occurred and was caused in whole or in part in Montana.

The Court has the authority to enter declaratory and injunctive relief under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and 28 U.S.C. §§ 2201 and 2202.

#### PARTIES

MONTANA DEMOCRATIC PARTY ("MDP") is a political party organized pursuant to Montana Code Ann. § 13-38-101 *et seq.* It meets the broad criteria for being a "political party" under SB 319's restrictions. *See* Mt. Code Ann. § 13-38-101. MDP is a Mont. Democratic Party candidates in local, congressional, and statewide elections within the state of Montana. MDP works to actively recruit candidates by educating, mobilizing, assisting, and turning out voters for the Democratic Party. MDP's activities include supporting Democratic Party candidates in local, national and local elections through fundraising and organizing; recruiting and registering voters; and ensuring that all voters have a meaningful opportunity to vote in Montana. MDP has thousands of members and

constituents from across the state, including college students in Montana and Montanans who regularly support candidates affiliated with the Democratic Party at all legislative and local future elections. MDP has expended millions of dollars to persuade and mobilize voters to support candidates up and down the ballot who affiliate with the Democratic Party in Montana. MDP again intends to make substantial expenditures to support Democratic candidates in the 2022 election and future elections.

MDP's past and future activities have been significant efforts to register and mobilize voters on college campuses, including by retaining staff whose responsibilities primarily include campus organizing. The Student Organizing Ban Act ("SOPA") interferes in three ways. First, it prohibits MDP from engaging in core political activity protected by the First Amendment, targeting MDP's core mission of recruiting, organizing, and mobilizing voters designed to influence the voters in an election. SOPA's ban on campus organizing interferes by frustrating MDP's mission and efforts to connect with voters on campus, to the detriment of suppressing the access of young voters, voters who support Democratic candidates, to the franchise. Third, due to the SOPA's ban on campus organizing, SOPA will prohibit MDP from registering and mobilizing voters on campus. The access to college and university campuses such as dorms, dining halls, and student unions that MDP will inevitably have to dedicate more staff to visit, register, and mobilize voters on campus in order to reach the same number of

potential voters, diverting both staff and monetary resources away from other mission-critical efforts.

(c) MDP's members, including thousands of college students in Montana, are injured by the Student Organizing Ban as it violates their First Amendment free-speech rights and specifically targets the right of college students to vote on the basis of their age in violation of the Twenty-Sixth Amendment.

THE MONTANANS FOR TESTER is the principal campaign committee of Governor Jon Tester. It meets the broad definition of a "political committee" under the MDP's restrictions. *See* Mont. Code Ann. § 13-1-1001(b)(1)(i). In order to support the election and re-election of Jon Tester to the United States Senate in this instance of this mission, Montanans for Tester expends millions of dollars to recruit, mobilize, assist, and turn out voters throughout the state, including on college campuses.

The Student Organizing Ban injures Montanans for Tester in three ways. First, the ban prevents Montanans for Tester from engaging in core political speech protected by the First Amendment, targeting Montanans for Tester's campaign efforts and specifically designed to influence the voters in an election. Second, the ban causes injury by frustrating Montanans for Tester's efforts to elect Jon Tester to the United States Senate in Montana by suppressing the turnout of young voters, who tend to tend to support Democratic

candidate, so the franchise. Third, due to the Student Organizing Ban—which prohibits Montanans for Tester from registering and mobilizing voters in high-traffic areas on college and university campuses such as dorms, dining halls, and athletic facilities—organizations for Tester will inevitably have to dedicate more staff to voter registration and mobilization on campus in order to reach the same number of potential voters, diverting both staff and monetary resources away from other critical voter efforts.

Finally, the effect of Montanans for Tester and MDP to register young voters on college campuses is a particularly poignant example of the inevitable impact of the Student Organizing Ban. Prior to the 2018 election, Montanans for Tester—working in partnership with MDP—registered over 2,000 new voters on college campuses through a door-to-door canvassing effort in high-traffic campus areas such as dorms and dining halls. The Student Organizing Ban would make such efforts illegal.

Ms. JESSICA PATRITTI is a resident of, and registered voter in, Montana. Ms. PATRITTI is 19 years old and a freshman at the University of Montana. Ms. PATRITTI has worked on the polls and was a student intern for the Montana Democratic Party during the 2020 election. As part of her responsibilities as an intern, Ms. PATRITTI would canvass the campus of Montana Technological University in Butte, Montana, through dorms and other areas, including in facilities such as dining halls. As a result of the Student Organizing Ban, Ms. Patritti would seek to conduct the

same activities again in coordination with a political committee such as MDP or Montanaans for Tester. These activities would now be prohibited by the Student Organizing Ban, injuring Ms. Parrilli by restricting her ability to engage in core political expression protected by the First Amendment. The Student Organizing Ban Ban also injures Ms. Parrilli by abridging her right to vote due to her age in violation of the *Young v. American Iron & Steel Inst.* Amendment.

2. Defendant CHAETLI JACOBSON is the Secretary of State of Montana and is sued in this Complaint in her official capacity. The Secretary is Montana's chief election officer, exercising her with the authority "to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those relating to [chapter 35, 36, or 37]" Mont Code Ann. § 13-1-201.

3. Defendant JERRY MANGAN is the Montana Commissioner of Elections. The Commissioner is sued as a Defendant in his official capacity. The Commissioner is charged with "investigating all of the alleged violations of the election laws contained in [chapter 35 of this title or [chapter 37]] and in conjunction with the attorney general is responsible for enforcing these election laws." Mont Code Ann. § 13-1-211. This includes, among other things, the regulation of campaign finance, *Mont. Code Ann.* *id.* 13-37-229, and the regulation of election procedures, *Mont. Code Ann.* *id.* 13-35-225.

## STATEMENTS OF FACTS AND LAW

20. For years, Montana has been a leader in administering secure and accessible elections. The record-breaking turnout that Montana saw in the 2020 general election—especially among young voters—is evidence that when it is easier to vote, more people vote. And the increased participation of young voters, in particular, was striking: over 40% more Montanans between the age of 18 and 29 cast ballots compared to the 2016 presidential election. In response, the Montana Legislature began to dismantle a number of the procedures and practices that made it difficult for young Montanans to participate in the political process.

21. But the Montana Legislature did not stop at voting procedures. In the wake of successful organizing and mobilization efforts by a number of organizations, including Big 29 and Montanans for Tester, the Legislature passed the Student Organizing and Voting Law with the intent to hamstring political committees aimed at increasing the engagement of college students across Montana.

22. The Legislature used a series of rare procedural maneuvers to transform SB 319 from a relatively innocuous campaign finance bill to one with profound implications for the political rights of Montana's college students.

23. State Senator Greg Verz introduced SB 319 on February 19, 2021, as the "Student Organizing Law Bill." The substance of the bill related entirely to



campaign finance regulations—specifically, the use of and reporting requirements for joint fundraising committees.

27. On the day Senator Herz introduced the bill, it was referred to the Senate Finance Administration Committee. The bill received a hearing on February 26, 2021, passed out of the State Administration Committee on March 1, 2021, and passed the Senate Finance Committee on March 2, 2021.

28. After SB 319 reached the Montana House of Representatives, it was referred to the House Administration Committee. The bill received a hearing in the House on March 17, 2021, passed out of the State Administration Committee with amendments on March 23, 2021, and was returned to the Senate—as an amended bill, HB 2423.

29. After the House passed HB 2423 on via SB 319 for more than two weeks, the Senate rejected the bill with amendments on April 23, 2021.

30. Under Montana's current Legislature's general practice to resolve any discrepancies between versions of a bill using a conference committee, conference committees consist of one member of the House and three members of the Senate. The conference committee's authority is limited to accepting, rejecting, or amending the disputed amendments.

31. If the conference committee fails to reconcile the disputed amendments, a conference committee can convene to salvage the bill.

32. A free conference committee has a broader mandate than a typical conference committee and is empowered to consider and adopt any amendment within the scope and title of the bill, even if such an amendment was not included in either chamber's version of the original bill.

33. In an unusual procedural move, the Legislature never appointed a conference committee to resolve the discrepancies between the House and Senate version of SB 319. Instead, in the last days of the legislative session, the Legislature sent the bill directly to a free conference committee.

34. On April 27, 2021, the free conference committee convened to consider potential amendments to SB 319.

35. During a brief meeting that lasted just under eighteen minutes, the members of the free conference committee adopted four amendments that fundamentally altered the scope and substance of SB 319.

36. The free conference committee did not seek or allow public comment on the amendments, nor were they subject to the scrutiny of the relevant House or Senate committee.

37. One of the most controversial of these amendments, the Student Organizing Bill (S.O.B.), (aka Section 21 of SB 319), prohibits political committees from directly or indirectly managing or conducting any "voter identification efforts, voter registration efforts, signature collection efforts, ballot collection efforts, or

vote in person either for a federal, state, local, or school election inside a residence hall, dining facility, or athletic facility operated by a public postsecondary institution.” §§ 319 § 21(1).

10. The Student Organizing Ban is designed to limit the ability of newly-enfranchised students voters to fully exercise the franchise by limiting the information available to them and by stopping them from engaging in constitutionally-protected political speech on college campuses.

11. The architect of the Student Organizing Ban, State Senator Steve Ferguson, explained that he had “no problem if kids vote,” but he wanted to protect them “from being exploited” by “really activist causes.”

12. In addition to its problematic purpose, the Student Organizing Ban will chill constitutionally-protected speech far outside the activities specifically enumerated in it.

13. For example, the Student Organizing Ban fails to provide any guidance as to what a “mobilization effort” means. The possibilities cover a range of constitutionally-protected activity, from commonplace election-related undertakings like door-to-door canvassing and one-on-one advocacy, to information about how to acquire

signature, identification to cast a ballot, to conversations about candidates, issues, and policies, even supported or opposed by a particular political committee.

However, even if the Student Organizing Ban purports to allow in-person organizing efforts provided the activity is undertaken “at [an] individual’s expense,” *Mont. Code Ann.* § 13-13-103(2)(E), neither SE 319 nor the Montana Election Code clearly indicate that it wants to undertake such activities at an “individual’s expense.” *Mont. Code Ann.* § 13-13-103(2)(E).

49. The Student Organizing Ban would prohibit any college student who lives in a dorm or regularly eats in a dining hall from undertaking or participating in any political activity prohibited by the Student Organizing Ban if that student undertakes them in conjunction with any political committee. Put another way, the Student Organizing Ban would prohibit students from engaging in constitutionally protected activities and free political speech in the place they call home.

50. The Montana Election Code’s definition of a “political committee” encompasses a broad range of political and civil rights organizations, *see* Mont. Code Ann. § 13-13-103(2)(A). The Student Organizing Ban will significantly hamper student-organizing efforts and deprive students of their rights.

51. *Mont. Code Ann.* § 13-13-103(2)(A) does not exempt student groups who meet the definition of “political committee” from the rules and regulations governing such organizations. If a student organization becomes an “incidental political

conducting a single expenditure supporting or opposing a candidate or ballot initiative, the Student Organizing Ban will have significant consequences for any student group that chooses to take a stand on the most important political and social issues of this era. Mont. Code Ann. § 13-1-101(23).

37. The constitutional chilling is particularly pronounced because of the steep penalties that accompany a violation of the Student Organizing Ban. Any person or organization that violates the Student Organizing Ban is subject to a “fine of up to \$1,000 for each violation” and “[e]ach day of a continuing violation constitutes a separate offense.” SB 319 § 21(4).

38. Put simply, the Student Organizing Ban violates the First Amendment’s core political speech, including and suppressing political speech. And, because it does so by standing apart in a blatant attempt to suppress the voting power of college students and in other ways, it also violates the Twenty Sixth Amendment.

### SIXTH FOR RELIEF

#### COUNT 1

**First Amendment and Fourteenth Amendment**  
**U.S. Const. Amend. I and XIV, 42 U.S.C. § 1983, 28 U.S.C. § 2201, 28 U.S.C. § 2202**  
**Restriction on Core Political Speech**

39. Plaintiff MTP, Montanans for Taxes, and Macee Parritti reallege and incorporate by reference paragraphs 1 through 49 as though fully set forth herein.

Montana's First Amendment, by way of the Fourteenth Amendment, bars Montana from abridging the right to free expression. The right is at its most potent “when the speaker’s talk is political, serving “to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.” *First Nat. Bank of Chicago v. Super. Ct.*, 457 U.S. 596, 604 (1982).

Montana’s § 12-12-101(C)(2)(b) Campaign Laws sees the First Amendment at its apogee. Montana’s law grants MDP and MDP’s rights to “participate in and contribute to” our system of government, including “political committees” like MDP and Montanans’ efforts to “fundrais[ing], coordinat[ing], manag[ing], or conduct[ing] any voter information drive, door-to-door canvassing drives, signature collection efforts, ballot collection efforts, or voter mail-off” is for a federal, state, local, or school election “in a residence hall, dining facility, or athletic facility operated by” the Montana State University System. § 12-12-101(C)(2)(b). It has also unconstitutionally restricted the ability of certain individuals (e.g., Marco Patrizi) to associate with organizations such as MDP in a freedom of association sense. In undertaking these expressive acts,

Montana’s law governs the “mechanics of the electoral process” and thus “is a regulation of pure speech,” targeting “only those” communications “relating speech designed to influence the voters in an election.” *Booth v. State of Maryland*, 514 U.S. 334, 345 (1995). And it does so on compelling grounds that require it to be open to free and robust expression. *See*

*Wideman v. University of Wisconsin*, 454 U.S. 263, 267 n.5 (1981) (“The college classroom with its surrounding environs is peculiarly ‘the marketplace of ideas.’”).

But the Student Organizing Ban singles out the voting-related expression of college students—and those who work with them—for regulation. Voter registration and signature collection efforts constitute “the type of [noncommercial] activities promoting political change that is appropriately deferred to the political arena.” *Boyer v. Grant*, 486 U.S. 414, 421-22 (1988), *cert. denied*, 490 U.S. 1031. Like MDP and Montanans for Tester express the intent to “work with voters with whom they share common goals, such as [the] [Montana] ballot.” The ban is therefore faced not “with an ordinary exercise of the First Amendment that targets and restricts political expression.” *Boyer*, 486 U.S. at 422-23.

Montana’s ban targets precisely those activities barred by Montana to encourage voter registration and to facilitate signature collection for ballot measures and political candidates with whom they share a common goal. For example, MDP and Montanans for Tester, and in the future, substantial resources in efforts to “offer a challenging voice on Montana’s college campuses. As a result of these efforts, more than 40,000 First Amendment-protected young college students whose First Amendment rights were secured by SB 219, Montanans for Tester has similarly targeted and targeted in the future, college campuses, registering 3,000 voters on

campaigns has been done in the lead up to the 2018 election. And Plaintiff Macee Pappas has devoted her time to assist in these efforts on Montana's campuses and political scene in the future.

56. The Supreme Court and the lower federal courts have explained that political speech is, at least, core First Amendment political speech. *See, e.g., Meyer*, 486 U.S. at 421 (regarding First Amendment rights with "potential signatories" constitute core political speech); *see also* *Blumenthal*, 455 F. Supp. 2d 694, 706 (N.D. Cal. 2006) (The "core" nature of voter registration drives is obvious: they encourage citizens to participate in the political process through voting is *fundamental to our democratic society*).<sup>17</sup>

57. The Student Organizing Plan, therefore, restricts Plaintiffs from participating in voter registration drives core to First Amendment protections. This burden on Plaintiffs constitutes a grave constitutional infringement. But the Student Organizing Plan is made worse by its effect on young voters.

58. The plan restricts young college students (a population of newly-minted voters) from participating in a receptive to voter outreach and the political speech that accompanies it. This plan restricts voting-related expression where they are most easily mobilized and heard. The plan vaguely describes the people, programs, and



places within its reach, it chills these same students from speaking on political issues as freely as they would were the law not in place.

“The burdens of these burdens, the Student Organizing Ban is subject to ‘heightened scrutiny’ and may only be upheld if it is narrowly tailored to serve a compelling government interest.” *Nguyen v. U.S. Dep. of Justice*, 514 U.S. at 347.

“The Ban cannot even withstand such scrutiny.

“The government cannot disavow even a legitimate interest—let alone a compelling one—when it enacts content-based restrictions on Plaintiffs’ interactions with the press.” *Nguyen v. U.S. Dep. of Justice*, 514 U.S. at 347. “At least because of the roughshod way the Student Organizing Ban was enacted, *Nguyen v. U.S. Dep. of Justice*, supra ¶¶ 25-37.

“The government has admitted that its purpose was to chill speech by imposing legal obstacles to keep students from being ‘exploited’ by ‘unscrupulous’ individuals.” *Nguyen v. U.S. Dep. of Justice*, supra ¶¶ 25-37. “The government has fully admitted that through the Student Organizing Ban, the speech that the government feared was too effective in mobilizing students to protest was being suppressed. At the same time, the government left unscathed those speakers whose messages are in accord with government views. This the First Amendment cannot do.”). This makes it a content-based restriction, and thus, presumptively unconstitutional. *See, e.g., Reed v. Town of Gilbert*, 137 S.Ct. 1221, 1234-36 (2013) (“[B]eing even if a law is facially content neutral,

it will also be deemed to be an unconstitutional content-based restriction if (1) it “cannot be justified without reference to the content of the regulated speech,” *or* (2) it was “enacted by the government because of disagreement with the message [the speech] conveyed.” (quotation marks omitted); *Ward v. Rock Against Racism*, 491 U.S. 781, 797 (1989), emphasizing that when determining whether a provision of legislation under the First Amendment is content neutral, courts must consider “whether the government has adopted a regulation of speech *because of* disagreement with the message conveyed” (emphasis added); *see also R.A.V. v. City of Boulder*, 505 U.S. 377, 384 (1992) (holding that the mere “possibility that the [regulation] might tend to damp the expression of particular ideas . . . would automatically render the statute [sic] presumptively invalid”).

Even if the government’s asserted interests, they will not be sufficient to justify the ban on the Student Organizing Ban to Plaintiffs’ right to free expression.

Plaintiffs are entitled to injunctive and declaratory relief to prevent the enforcement of the ban imposed by the Student Organizing Ban to Plaintiffs’ right to free speech guaranteed by the First Amendment.

COUNT II

**Twenty-Sixth Amendment**

**U.S. Const. Amend XXVI, 42 U.S.C. § 1983, 28 U.S.C. § 2201, 28 U.S.C. § 2202**

**Denial or abridgement of the Right to Vote on Account of Age**

¶ 45. Plaintiff's complaint incorporates by reference paragraphs 1 through 49 as being fully and truthfully stated.

¶ 46. The Twenty-Sixth Amendment to the U.S. Constitution provides in relevant part that the right of citizens of the United States, who are eighteen years of age or older, shall not be denied or abridged by any State on account of age. Congress passed the amendment not merely to empower voting by our youths but also to ensure equal exercise of the voting, through the elimination of the age barrier. As the Supreme Court has said, "that the vigor and idealism could be brought into the government and its locally constituted institutions." *Worden v. Board of Election Commissioners*, 394 U.S. 223, 243 (U.S. Sup. 1972).

¶ 47. The Twenty-Sixth Amendment guarantees young, qualified voters a substantial equal opportunity with other qualified voters in the electoral process. While the amendment is primarily "a long discrimination," it has "particular importance to young people, who comprise approximately 50 per cent of all who vote in the United States." *Walgren v. Howes*, 482 F.2d 95, 101 (1st Cir. 1973), *aff'd*, 517 F.2d 731 (5-25).

As a result, laws that have the purpose, even in part, of denying or abridging the right to vote on account of age are unconstitutional. *League of Women Voters v. Denver*, 214 F. Supp. 3d 1213, 1222-23 (N.D. Fla. 2018) (holding plaintiffs are constitutionally able to succeed on merits of Twenty-Sixth Amendment challenge to restrictive state guidance “unexplainable on grounds other than age”); *Id. v. Project-Common Cause v. Anderson*, 495 P.2d 220, 222-23 (Colo. 1972) (holding, based on “[h]istory and reason” that the Twenty-Sixth Amendment “prohibit[ed] denying the right to vote to anyone eighteen years of age or over” and that “[t]he right applies to the entire process involving the exercise of the franchise”); *Id.*

Under the Student Organizing Ban, the State has targeted Montana’s college-age voters with significant restrictions on their political speech in college residence halls, dining facilities, and other public buildings, as well as other type of public building—in a manner that effectively prevents committee members from reaching young, college-age voters and organizing efforts. In this way the Student Organizing Ban amounts to a significant and unjustified discrimination on the basis of age in violation of the Equal Protection Clause of the United States Constitution.

Therefore, a permanent injunction is needed to prevent the serious and ongoing harm to Plaintiffs’ fundamental rights caused by the Student Organizing Ban on Plaintiffs’ fundamental right to vote.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- a) declaring, under the authority granted to this Court by 28 U.S.C. § 2201, that the Student Organizing Ban violates the First, Fourteenth, and Twenty-Sixth Amendments to the United States Constitution;
- b) enjoining the Secretary and Commissioner of Political Practices, under the authority granted to this Court by 28 U.S.C. §2202, from enforcing the Student Organizing Ban;
- c) awarding Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1988 and other applicable laws; and
- d) granting such other and further relief as the Court deems just and proper.

Dated: October 12, 2021

Respectfully submitted,

/s/ Peter Michael Meloy

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